Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES L. BOWLEY,

Petitioner,

v.

CITY OF UNIONTOWN POLICE DEPARTMENT; HERALD-STANDARD; CITY OF UNIONTOWN, a municipal corporation; OFFICER FRED BALSLEY, individually and in his capacity as a police officer,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. **Whether the lower courts erred in granting a Motion to Dismiss on the grounds that a newspaper has a First Amendment right to publish a juvenile arrest record, in contravention of a narrowly crafted Pennsylvania statute expressly declaring such information confidential?**

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OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals appears at Appendix p2A and was reported as James L. Bowley v. City of Uniontown Police Department, et al, 404 F.3d 783, 33 Media L. Rep. 1642 (3d Cir. 2005). The Report and Recommendation of the United States District Court for the Western District of Pennsylvania is not reported and appears at Appendix p14A.

STATEMENT OF JURISDICTION

Petitioners seek this Court's review of the judgment of the United States Court of Appeals for the Third Circuit entered April 26, 2005. Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

42 Pa. C.S. §6308(b)(1): **The contents of law enforcement records and files concerning a child shall not be disclosed to the public** except if the child is 14 or more years of age at the time of the alleged conduct and if any of the following apply:

(I) The child has been adjudicated delinquent by a court as a result of an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of section 13(a)(30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of section 13(a)(30) of The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

42 Pa. C.S. §6308(b)(1) (footnote omitted). (emphasis added)

AMENDMENT I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Plaintiff commenced this action on November 28, 2001, by filing a Praecipe for Writ of Summons in the Court of Common Pleas of Fayette County, Pennsylvania. A Complaint was then filed on July 7, 2003. The action was originally initiated in the Court of Common Pleas of Fayette County . The Complaint set forth 3 (three) counts which included: I-Breach of Confidentiality; II-Invasion of Privacy; and, III-Civil Rights Violations. As the Complaint set forth a claim for federal constitutional and civil rights violations and sought relief pursuant to 42 U.S.C. §1983, the matter was removed to The United States District Court for the Western District of Pennsylvania.

On or about November 28, 2000, Defendant Herald Standard ran an article in their newspaper stating that Plaintiff had been arrested on November 26, 2000 for allegedly raping a 7 year old girl he had been babysitting. The story was based upon information the newspaper had received from the Defendant Police Department, and in particular, from Defendant Balsley.

Under Pennsylvania law, information concerning alleged criminal activities and in particular, the contents of law enforcement records and files, concerning a child shall not be disclosed to the public unless the child is over 14 and has been adjudicated delinquent by a court for certain specified acts. See 42 Pa. C.S. §6308. At the time of the publication, Plaintiff Bowley had not been adjudicated delinquent, and he has never been adjudicated delinquent for the acts specified by the statute. Defendants had a duty under Pennsylvania law to keep information concerning allegations of criminal acts of a minor child such as Plaintiff completely confidential. By disclosing that plaintiff had arrested for allegedly committing a serious, highly prejudicial and odious act to the public to and in a public newspaper, Defendants

breached this obligation, particularly since both the name of the plaintiff and his age were disclosed in the newspaper article.

The Complaint alleged (Count I) that Defendant Herald Standard breached the plaintiff's confidentiality by willfully and unlawfully, or alternatively, unnecessarily, recklessly and in conscious disregard of the plaintiff's rights, publishing an article in its newspaper telling the public the name of plaintiff and his alleged criminal act. The person or persons to whom the information was divulged, the public, had no legitimate interest in such information and hence the divulging of the information was not privileged.

On the basis of these same facts (Count II) an action of invasion of privacy was also alleged against the newspaper.

(Count III) alleged that the municipal defendants and Officer Balsley violated plaintiff's civil rights by publishing the information and by pursuing a policy, custom or procedure of failing to educate, train or otherwise inform police officers of the basic requirements concerning confidentiality of juvenile records.

The complaint alleged that plaintiff was damaged from the breach of confidentiality and the invasion of privacy.

The Honorable Robert C. Mitchell, Magistrate Judge, issued a Report and Recommendation dated September 24, 2003, granting a Motion to Dismiss filed on behalf of defendant Uniontown Herald-Standard which was confirmed by the District Court. An appeal was taken to the Third Circuit Court of Appeals from a Stipulation for Dismissal, as ordered by Honorable Joy Flowers Conti dated April 13, 2004, which served to make final and appealable her Order dated December 4, 2003, which adopted the opinion of Honorable Robert C. Mitchell. Following oral

argument, the panel, consisting of Circuit Judges Nygaard, McKee and Rendell, affirmed the District Court's grant of the Herald Standard's Motion to Dismiss.

The facts of the case follow:

On or about November 28, 2000, Defendant Herald Standard ran an article in their newspaper stating that Plaintiff had been arrested on November 26, 2000 for allegedly raping a 7 (seven) year old girl he had been babysitting. The story was based upon information the newspaper had received from the Defendant Police Department, and in particular, from Defendant Balsley.

The article stated as follows:

> City police arrested James Landon Bowley, 15, of Farmington Sunday on charges he allegedly raped a 7-year-old girl he was babysitting at her Uniontown home Friday evening.
>
> According to police, the girl's mother took her daughter to Uniontown Hospital after the girl complained of injury and bleeding Sunday afternoon.
>
> Bowley turned himself in to police Sunday at 5:45 p.m. and was charged with two counts of rape and one count each of indecent assault, involuntary deviate sexual intercourse and indecent exposure. Charges against Bowley were filed at the Connellsville Juvenile Detention Facility, where he is being held, police said.

Plaintiff James L. Bowley was born on November 17, 1985.

Under Pennsylvania law, information concerning alleged criminal activities and in particular, the contents of law enforcement records and files, concerning a child shall not be disclosed to the public unless the child is over 14 (fourteen) and has been adjudicated delinquent by a court for certain specified acts. See 42 Pa. C.S. §6308. Defendants had a duty under Pennsylvania law to keep information concerning allegations of criminal acts of a minor child such as Plaintiff completely confidential. By disclosing that Plaintiff had been arrested for allegedly committing a serious, highly prejudicial and odious act to the public and in a public newspaper, Defendants breached this obligation, particularly since both the name of the Plaintiff and his age were disclosed in the newspaper article.

As a result of Defendants' actions, Plaintiff suffered extreme humiliation, mental anguish, embarrassment, fear of social ostracism, and other severe mental distress. The injuries caused the Plaintiff great pain and suffering, preventing him from attending his usual duties and activities.

Since the matter was decided on the basis of the defendant newspaper's Rule 12(b)(6) motion, the above facts are taken directly from plaintiff's complaint at p30-36A.